



ZJW
AF

Docket No: K-244

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Application of	:	Confirmation No: 6517
)	
KIM, Ji Woong	:	Examiner: Phillips, Hassan A
)	
Serial No: 09/740,846	:	Group Art Unit: 2151
)	
Filed: December 21, 2000	:	Customer No. 34610
)	
For: INTERNET MICROWAVE OVEN		

REPLY BRIEF

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed on October 20, 2006, in connection with the above-identified application.

TIMLY FILED

Appellants respectfully submit that consideration of the Reply Brief is proper because it has been submitted within the two-month limit set forth in 37 CFR § 41.41(a)(1).

RESPONSE TO ARGUMENTS IN EXAMINER'S ANSWER

Appellant submits that the reasons set forth in the Examiner's Answer in support of the rejections in the Office Action mailed on November 18, 2005, are insufficient for purposes of establishing a *prima facie* case of obviousness of the pending claims.

In the Examiner's Answer, in support of the § 103(a) rejection of claim 33, the Examiner acknowledged that the Emmott publication does not teach or suggest a microwave oven having a signal converting unit which performs the following functions based on information obtained from a Internet search engine:

- 1) "automatically converting the downloaded cooking information into a signal capable of being recognized by the microcomputer when said one of the displayed results is selected by a user;" and
- 2) the converted signal "control[s] the microcomputer to automatically set the oven to perform a cooking operation in response to a user signal."

Nevertheless, the Examiner argued that the Thurm publication makes up for these differences. The Thurm publication discloses a refrigerator having an Internet connection and a display screen. In operation, a user downloads cooking information (e.g., a recipe) through the Internet connection for display on the refrigerator display screen. The recipe is then used to automatically program the oven to cook the recipe.

The Thurm system, thus, requires an external appliance in the form of a refrigerator to program the cooking of food based on a recipe derived from the Internet. The Thurm publication does not teach or suggest that an oven includes a microcomputer and a signal converting unit, the latter of which performs the functions of "automatically converting the downloaded cooking information into a signal capable of being recognized by the microcomputer when said one of the displayed results is selected by a user," and that the

converted signal is then used to “control the microcomputer to automatically set the oven to perform a cooking operation in response to a user signal.”

Notwithstanding these omissions, the Examiner argued that the rejection was proper because: “[A]lthough the teachings of Thurm require an external appliance (i.e. the refrigerator), examiner maintains that it would have been obvious to one of ordinary skill in the art to utilize the functionality of the refrigerator in the oven.” (See Page 16 of the Examiner’s Answer). Appellants respectfully submit that the Examiner’s explanation is improper for two reasons.

First, the Thurm publication does not teach or suggest placing a microcomputer and signal converting unit which performs the functions recited in claim 33 in an oven. Rather, the passage in Thurm which was relied on to issue the rejection (Fourth Paragraph under Full Text section) teaches away from these features, i.e., this portion of Thurm discloses performing the recited functions in a refrigerator, not an oven.

Second, the rationale given by the Examiner to support his obviousness contention is improper as a matter of law. On page 16 of the Answer, the Examiner stated his reason as for why he believes it would have been obvious to utilize the functionality of Thurm in the oven of Emmott: “moving the functionality of the refrigerator to the oven is not non-obvious, and would have allowed a person utilizing the teachings of Emmott (col. 5, lines 23-29) to use the downloaded information selected by a user from the display to cook food automatically.”

The Examiner, therefore, essentially argues that using Thurm's functionality in the Emmott oven would have been obvious because it would not have been non-obvious. This amounts to a mere gratuitous assertion which is insufficient for purposes of substantiating a § 103(a) rejection. *In re Dimbiczak*, 50 USPQ.2d 1614 (Fed. Cir. 1999).

The Examiner further stated that the using Thurm's functionality in the Emmott oven would have been obvious because it would have allowed a person to use the Emmott oven to perform the oven of claim 33. Yes, that is true. But, in order to properly make this argument, there must be some objective teaching or suggestion in the cited references that would support modifying Emmott to perform Thurm's functionality. Appellants respectfully submit that no teaching or suggestion of this type exists, i.e., as Thurm's disclosure only pertains to a refrigerator which performs an Internet search for a recipe and then programs an oven to cook food based on the recipe. This functionality is performed solely by a refrigerator. There is no teaching or suggestion in Thurm to modify Emmott to perform these functions in an oven.

As for column 5, lines 23-29, of Emmott, this disclosure only acknowledges that an oven having an internet connection can enhance the interactive aspects of the oven. Neither this portion of Emmott nor any other portion teaches or suggest that an oven may be modified to include the following features, even taking the refrigerator-based teachings of Thurm into consideration:

- 1) "automatically converting the downloaded cooking information into a signal capable of being recognized by the microcomputer when said one of the displayed results is selected by a user;" and

- 2) the converted signal “control[s] the microcomputer to automatically set the oven to perform a cooking operation in response to a user signal.”

Additionally, on page 17 of the Examiner’s Answer, the Examiner acknowledged that while Thurm does not expressly disclose that its oven includes features 1) and 2) above, “it is *implied* that *either the oven* or the refrigerator includes” these features. (Emphasis added). The Examiner, however, has cited no specific line of Thurm to show where such an implication is made. On the contrary, the Thurm publication only discloses that its refrigerator performs the functions of downloading a recipe from the Internet and automatically programming an oven to cook food based on that recipe. There is no mention whatsoever of the oven performing these functions.

Additionally, the Examiner took the position that the oven of claim 33 is obvious because the oven as claimed provides “no unexpected results.” (See page 17). However, unexpected results is not a requirement for purposes of showing non-obvious. *In re Geisler*, 43 USPQ.2d 1462 (Fed. Cir. 1997)(unexpected results is only required for claims that recite ranges of values). That is, while a showing of unexpected results may be properly relied on to show non-obviousness, unexpected results is not a requirement of non-obviousness.

Finally and importantly, Appellants emphasize that “obvious to try” is not the proper standard for determining obviousness under § 103(a). *In re Fine*, 5 USPQ.2d 1596 (Fed. Cir. 1988). Instead, in order to establish a *prima facie* case of obviousness, the cited references must teach or suggest all the features in claim 33 and then there must be a clear, objective teaching or suggestion in the references themselves to support their combination in the manner claimed.

See MPEP § 2143.01 and *In re Rouffet*, 47 USPQ.2d 1453, 1457 (Fed. Cir. 1998). For the foregoing reasons and for the reasons set forth in detail in the Appeal Brief, Appellants submit that the cited references fail to satisfy these requirements.

Appellants submit the reasons provided in the Examiner's Answer to support the rejections of the other independent claims are similarly improper, both when applied to Emmott and Thurm and the other references of record including Fowler, i.e., Thurm also fails to teach or suggest modifying Fowler (either taken alone or in combination with Emmott) to achieve the methods and ovens recited in the remaining claims. Appellants further re-iterate all of the arguments set forth in the Appeal Brief.

For the foregoing reasons, Appellants respectfully request the Board to reverse all the rejections in the Final Office Action.

Respectfully submitted,



Daniel Y. J. Kim
Registration No. 36,186

Samuel W. Ntiros
Registration No. 39,318

FLESHNER & KIM, LLP
2325 Dulles Corner Boulevard, Suite 1100
Herndon, Virginia 20171
Telephone: (703) 766-3701
Date: **DECEMBER 12, 2006**

DYK/SWN:knh
\\Fk4\Documents\2016\2016-392\110325.rtf